



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 2, 2002

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2002-6846

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172950.

The Mesquite Police Department (the "department") received a request for police reports made by the requestor pertaining to a named individual, as well as calls for service and police reports made concerning the requestor's address, from July, 2002 through the present. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The documents submitted at Tab 3 relate to allegations of child abuse. Thus, these documents are within the scope of section 261.201 of the Family Code. You state that the department has not adopted any internal rules that govern the release of this type of information. Therefore, we determine that the documents at Tab 3 are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold these documents in their entirety under section 552.101 of the Government Code as information made confidential by law.¹

Next, you contend that the incident reports submitted at Tab 2 are confidential under section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007(c) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

¹We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the "DPRS"), a parent who is a requestor may be entitled to access to the DPRS's records. Section 261.201(g) of the Family Code provides that DPRS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DPRS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The incident reports at Tab 2 involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, we determine that the reports at Tab 2 are confidential pursuant to 58.007(c) of the Family Code. You must withhold incident reports at Tab 2 from disclosure under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. You have highlighted information in the documents at Tab 4 and Tab 5 that you contend is excepted from disclosure under common-law privacy. Upon review, we have marked certain information pertaining to the requestor that is subject to common-law privacy. However, we note that the requestor has a special right of access to this information. Gov't Code § 552.023 (requestor has a special right of access to information that is excepted from public disclosure under laws intended to protect the requestor's own privacy interest as the subject of the information). See also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual asks governmental body to provide her with information concerning herself). The marked information pertaining to the requestor may not be withheld from the requestor under common-law privacy. Furthermore, a portion of the highlighted information that you seek to withhold under common-law privacy pertains to alleged criminal activity. Generally, the public has a legitimate interest in the details of crime and police efforts to combat crime in the community. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (public's legitimate interest in community affairs is particularly sensitive and important as applied to police activity). Accordingly, we determine that the public has a legitimate interest in this information. Thus, the department may not withhold the remainder of the information you have marked under common-law privacy.

You claim that the telephone numbers and addresses that you have highlighted are excepted from disclosure pursuant to section 552.101 in conjunction with chapter 772 of the Health and Safety Code. We assume that any emergency 911 district involved here was established in accordance with chapter 772, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety

Code make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. *See* Health & Safety Code § 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318 of the Health and Safety Code, the originating telephone numbers that you have highlighted are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. Otherwise, the department must release these numbers to the requestor.

We note that the submitted documents contain a social security number that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security number and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district attorney pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you claim that a portion of the submitted information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Upon review, however, we are unable to determine whether the marked motor vehicle information pertains to the requestor's vehicle. If the department determines that the marked motor vehicle information pertains to the requestor's vehicle, then the requestor has a special right of access to this information pursuant to section 552.023 and it must be released to the requestor. Otherwise, the department must withhold the marked motor vehicle information from disclosure under section 552.130 of the Government Code.

In summary, the department must withhold the documents submitted at Tab 3 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the documents at Tab 2 under section 552.101 in conjunction with section 58.007 of the Government Code. If the emergency communication district here is subject to section 772.118, 772.218 or 772.318 of the Health and Safety Code, the originating telephone numbers and addresses that you have highlighted are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. A social security number may be confidential pursuant to section 552.101 and federal law. If the marked motor vehicle information does not pertain to the requestor's vehicle, this information must be withheld under section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestor. We note, however, that this requestor has a special right of access to some of the information at issue under section 552.023. In the event the department receives another request for this information from someone other than this requestor or her authorized representative, the department must ask this office for a decision whether the information is subject to public disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

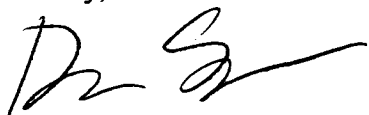
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10-calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 172950

Enc: Submitted documents

c: Ms. Anita T. Botello
1808 Willow Creek
Mesquite, Texas 75181
(w/o enclosures)